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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,287	03/24/2004	Yasushi Sugaya	1065.1029D	3921

21171 7590 04/20/2007  
STAAS & HALSEY LLP  
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1201 NEW YORK AVENUE, N.W.  
WASHINGTON, DC 20005

EXAMINER
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TRAN, DZUNG D

ART UNIT	PAPER NUMBER
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2613

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/20/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/807,287	SUGAYA, YASUSHI	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dzung D. Tran	2613	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-24 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22, 24 and 27-29 is/are allowed.
- 6) ☒ Claim(s) 23 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujita et al. U.S. patent no. 6,008,935 in view of Bousselet et al. U.S. patent no. 6,466,345.

In considering claim 23, Fujita discloses in Figure 2, an optical amplifier gain control apparatus for detecting peaks of wavelength division-multiplexed light, comprising:

an optical amplifier 10 for amplifying wavelength multiplexed light;

optical level control means 100 for controlling the optical level of WDM light;

a tunable optical filter (abstract, figure 2, element 30, column 4, line 55) having a bandwidth for selectively passing light of each wavelength of wavelength-division-multiplexed light;

peak detection means for detecting the peaks of the light output from said tunable optical filter (abstract, figure 2, element 60, column 4, line 56);

feedback means (e.g., a feedback loop from 20, 30, 50, 60, 90 to 100) for inputting a feedback signal to said optical level control means 100 in such a manner that maximum peak value will become a set value;

feedback means (e.g., a feedback loop from 20, 30, 50, 60, 90 to 100) for controlling said optical level control means based upon the detected peak value.

Fujita differs from claim 23 of the present invention in that Fujita does not specific discloses a light equalizing filter located with said tunable optical filter.

Bousselet discloses in Figure 1, a light equalizing filter 7 (col. 4, lines 45-46).

At the time of the invention was made, it would have been obvious to a person of ordinary skill in the art to include the light equalizing filter that is taught by Bousselet in the system of Fujita. One of ordinary skill in the art would have been motivated to do this in order to provide a good optical signal at the receiving end. Thus, it improves the monitoring and detecting of the optical signal.

In considering claim 26, Fujita discloses in Figures 12 and 2, an apparatus for controlling wavelength division-multiplexed light, comprising:

a first optical fiber amplifier 90 of Figure 12, for amplifying wavelength multiplexed light;

optical level control means 100 for controlling the optical level of WDM light;

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a second optical fiber amplifier (e.g., the optical amplifier unit of Figure 2 that used inside of the optical amplifier 90 of Figure 12) for amplifying wavelength multiplexed light output from the optical level control means 100;

a tunable optical filter (abstract, figure 2, element 30, column 4, line 55) having a bandwidth for selectively passing light of each wavelength of wavelength-division-multiplexed light;

peak detection means for detecting the peaks of the light output from said tunable optical filter (abstract, figure 2, element 60, column 4, line 56);

feedback means (e.g., a feedback loop from 20, 30, 50, 60, 90 to 100) for inputting a feedback signal to said optical level control means 100 in such a manner that maximum peak value will become a set value

Fujita differs from claim 26 of the present invention in that Fujita does not specific discloses a light equalizing filter located with said tunable optical filter.

Bousselet discloses in Figure 1, a light equalizing filter 7 (col. 4, lines 45-46).

At the time of the invention was made, it would have been obvious to a person of ordinary skill in the art to include the light equalizing filter that is taught by Bousselet in the system of Fujita. One of ordinary skill in the art would have been motivated to do this in order to provide a good optical signal at the receiving end. Thus, it improves the monitoring and detecting of the optical signal.

3. Claim 22, 24, 27-29 are allowed.

***Response to Argument***

4. Applicant's arguments filed on 01/23/2007 have been fully considered but they are not persuasive.

**A. Rejection of claims 23 and 26 under *USC § 103(a)* as being unpatentable over Fujita et al. U.S. patent no. 6,008,935 in view of Bousselet et al. U.S. patent no. 6,466,345.**

Applicant argues that neither Fujita nor Bousselet discloses the limitations of the amended independent claim 23 and 26. However, as the rejection above, Fujita discloses all the limitations except for a light equalizing filter and Bousselet discloses a missing limitation that is a light equalizing filter 7 (col. 4, lines 45-46). Therefore, one of ordinary skill in the art would have been motivated to include the light equalizing filter that is taught by Bousselet in the system of Fujita in order to provide a good optical signal at the receiving end. Thus, it improves the monitoring and detecting of the optical signal. Furthermore, it is not necessary that the references actually suggest, expressly or in so many words, the changes or improvements that applicant has made. The test for combining references is what the references as a whole would have suggested to one of ordinary skill in the art. In re Sheckler, 168 USPQ 716 (CCPA 1971); In re McLaughlin 170 USPQ 209 (CCPA 1971).

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dzung D Tran whose telephone number is (571) 272-3025. The examiner can normally be reached on 9:00 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dzung Tran  
04/15/2007



**DZUNG TRAN**  
**PRIMARY PATENT EXAMINER**